

REMARKS

A seven-way restriction requirement was entered in the parent application. This preliminary amendment pursues II, claims 28-44 relative to that restriction requirement. It also respectfully submits that claims 1-27, originally characterized as Group I claims in the parent application restriction requirement, should also properly be examined in this divisional application. Entry and examination of the application on the basis of this preliminary amendment is respectfully requested.

Claims

As stated above, claims 28-44 are presented for examination. These are apparatus claims. However, Applicants respectfully submit that claims 1-27, also presented herein, are properly examinable with claims 28-44.

In the restriction requirement in the parent application, the Examiner distinguished claims 1-27 from claims 28-44 as process, and an apparatus for its practice, respectively. As a different group of claims was pursued in the parent application, the relationship between claims 1-27 and 28-44 was not fully discussed in that application. However, it is respectfully submitted these two sets of claims are neither independent nor distinct under the U. S. PTO's restriction practice, even if they fall under different statutory classes.

Under MPEP § 806.04(e), thinkness of apparatus and method claims evaluated by the claim language. The process of claim 1 must be practicable by another materially different apparatus or by hand; or the apparatus of claim 28 must be usable to practice another and materially different process.

The method of claim 1 implicitly includes the step of "providing a unique identifier to a set of seed" (step a). Operations are automatically performed on the set of seed (step b). The end

product is automatically accumulated from the set of seed and information is stored about the end product which is correlated to the unique identifier previously defined (step c).

Claim 28 includes a controller which "accepts or assigns an ID to a set of seeds" (step (d1)), processes the set of seeds yet control of a handling system (step (d2)), and accumulates seed from the set of seeds and information about the seed which is correlated with the ID (step (d3)).

Therefore, each independent claim from the two sets of claims finds the same essential characteristics. They are different ways to define the same similar concept. They are, therefore, not materially different.

Furthermore, the process cannot be practiced by hand. Claim 1 specifically cites "automatically performing" and "automatically accumulating". Practice by hand is explicitly excluded from claim 1.

Finally, the recitation of the same essential characteristics in both claims 1 and 28 include and find that the process of claim 1 could be practiced by a materially different apparatus or the apparatus can be used to practice another materially different process. Both claims 1 and 28 assign a unique identifier to a set of seed, operation on the set of seed, accumulate an end product from the set of seed, and store information correlated to the identifier. To interpret claim 28 to be able to practice a materially different method would require changing or eliminating wording of the claim.

Additionally, there have been some minor grammatical and dependency changes made to claims 1-44. These are identical to ones made in the parent application.

Therefore, it is respectfully submitted that claims 1-44 are properly in this divisional application.

Specification

This preliminary amendment makes changes to the Specification which were made in the parent application, which has been allowed.

Drawings

Concurrently filed with this preliminary amendment is the submission of formal drawings. These formal drawings are the same as submitted in the parent application, which is now allowed.

Information Disclosure Statement


Also submitted herein is an Information Disclosure Statement.

Conclusion

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



MARK D. HANSING, Reg. No. 30,643
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 27142

Attorneys of Record

-bj -